

1 SENATE BILL 845

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 Vernon D. Asbill

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10 AN ACT

11 RELATING TO ENVIRONMENTAL IMPROVEMENT; AMENDING THE DEFINITION  
12 OF "ABOVE GROUND STORAGE TANK" TO EXCLUDE A TANK USED BY A  
13 CROP-DUSTING OR CROP-SPRAYING SERVICE.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 Section 1. Section 74-4-3 NMSA 1978 (being Laws 1977,  
17 Chapter 313, Section 3, as amended) is amended to read:

18 "74-4-3. DEFINITIONS.--As used in the Hazardous Waste  
19 Act:

20 A. "above ground storage tank" means a single tank  
21 or combination of tanks, including underground pipes connected  
22 thereto, that are used to contain petroleum, including crude  
23 oil or any fraction thereof that is liquid at standard  
24 conditions of temperature and pressure of sixty degrees  
25 Fahrenheit and fourteen and seven-tenths pounds per square inch

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1 absolute, and the volume of which is more than ninety percent  
2 above the surface of the ground. "Above ground storage tank"  
3 does not include any:

4 (1) farm, ranch or residential tank used for  
5 storing motor fuel or heating oil for noncommercial purposes;

6 (2) pipeline facility, including gathering  
7 lines regulated under the federal Natural Gas Pipeline Safety  
8 Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act  
9 of 1979, or that is an intrastate pipeline facility regulated  
10 under state laws comparable to either act;

11 (3) surface impoundment, pit, pond or lagoon;

12 (4) storm water or wastewater collection  
13 system;

14 (5) flow-through process tank;

15 (6) liquid trap, tank or associated gathering  
16 lines or other storage methods or devices related to oil, gas  
17 or mining exploration, production, transportation, refining,  
18 processing or storage, or to ~~[the]~~ oil field service industry  
19 operations;

20 (7) tank associated with an emergency  
21 generator system;

22 (8) tank used by a crop-dusting or crop-  
23 spraying services;

24 [~~(8) pipes~~] (9) pipe connected to any tank  
25 that is described in Paragraphs (1) through [~~(7)~~] (8) of this

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1 subsection; or

2 [~~(9) tanks~~] (10) tank or related [~~pipelines~~]  
3 pipeline and [~~facilities~~] facility owned or used by a refinery,  
4 natural gas processing plant or pipeline company in the regular  
5 course of their refining, processing or pipeline business;

6 B. "board" means the environmental improvement  
7 board;

8 C. "corrective action" means an action taken in  
9 accordance with rules of the board to investigate, minimize,  
10 eliminate or clean up a release to protect the public health,  
11 safety and welfare or the environment;

12 D. "director" or "secretary" means the secretary of  
13 environment;

14 E. "disposal" means the discharge, deposit,  
15 injection, dumping, spilling, leaking or placing of any solid  
16 waste or hazardous waste into or on any land or water so that  
17 such solid waste or hazardous waste or constituent thereof may  
18 enter the environment or be emitted into the air or discharged  
19 into any waters, including ground waters;

20 F. "division" or "department" means the department  
21 of environment;

22 G. "federal agency" means any department, agency or  
23 other instrumentality of the federal government and any  
24 independent agency or establishment of that government,  
25 including any government corporation and the government

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1 printing office;

2 H. "generator" means any person producing hazardous  
3 waste;

4 I. "hazardous agricultural waste" means hazardous  
5 waste generated as part of [~~his~~] the licensed activity by [~~any~~]  
6 a person licensed pursuant to the Pesticide Control Act or  
7 [~~any~~] hazardous waste designated as hazardous agricultural  
8 waste by the board, but does not include animal excrement in  
9 connection with farm, ranch or feedlot operations;

10 J. "hazardous substance incident" means [~~any~~] an  
11 emergency incident involving a chemical or chemicals, including  
12 but not limited to transportation wrecks, accidental spills or  
13 leaks, fires or explosions, which incident creates the  
14 reasonable probability of injury to human health or property;

15 K. "hazardous waste" means any solid waste or  
16 combination of solid wastes that because of their quantity,  
17 concentration or physical, chemical or infectious  
18 characteristics may:

19 (1) cause or significantly contribute to an  
20 increase in mortality or an increase in serious irreversible or  
21 incapacitating reversible illness; or

22 (2) pose a substantial present or potential  
23 hazard to human health or the environment when improperly  
24 treated, stored, transported, disposed of or otherwise managed.

25 "Hazardous waste" does not include any of the following, until

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1 the board determines that they are subject to Subtitle C of the  
2 federal Resource Conservation and Recovery Act of 1976, as  
3 amended, 42 U.S.C. 6901 et seq.:

4 (a) drilling fluids, produced waters and  
5 other wastes associated with the exploration, development or  
6 production of crude oil or natural gas or geothermal energy;

7 (b) fly ash waste;

8 (c) bottom ash waste;

9 (d) slag waste;

10 (e) flue gas emission control waste  
11 generated primarily from the combustion of coal or other fossil  
12 fuels;

13 (f) solid waste from the extraction,  
14 beneficiation or processing of ores and minerals, including  
15 phosphate rock and overburden from the mining of uranium ore;  
16 or

17 (g) cement kiln dust waste;

18 L. "manifest" means the form used for identifying  
19 the quantity, composition, origin, routing and destination of  
20 hazardous waste during transportation from point of generation  
21 to point of disposal, treatment or storage;

22 M. "person" means ~~[any]~~ an individual, trust, firm,  
23 joint stock company, federal agency, corporation, including a  
24 government corporation, partnership, association, state,  
25 municipality, commission, political subdivision of a state or

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1 any interstate body;

2 N. "regulated substance" means:

3 (1) [~~any~~] a substance defined in Section  
4 101(14) of the federal Comprehensive Environmental Response,  
5 Compensation, and Liability Act of 1980, but not including  
6 [~~any~~] a substance regulated as a hazardous waste under Subtitle  
7 C of the federal Resource Conservation and Recovery Act of  
8 1976, as amended; and

9 (2) petroleum, including crude oil or any  
10 fraction thereof that is liquid at standard conditions of  
11 temperature and pressure of sixty degrees Fahrenheit and  
12 fourteen and seven-tenths pounds per square inch absolute;

13 O. "solid waste" means any garbage, refuse, sludge  
14 from a waste treatment plant, water supply treatment plant or  
15 air pollution control facility and other discarded material,  
16 including solid, liquid, semisolid or contained gaseous  
17 material resulting from industrial, commercial, mining and  
18 agricultural operations, and from community activities, but  
19 does not include solid or dissolved materials in domestic  
20 sewage or solid or dissolved materials in irrigation return  
21 flows or industrial discharges that are point sources subject  
22 to permits under Section 402 of the federal Water Pollution  
23 Control Act, as amended, 86 Stat. 880, or source, special  
24 nuclear or byproduct material as defined by the federal Atomic  
25 Energy Act of 1954, as amended, 68 Stat. 923;

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1 P. "storage" means the containment of hazardous  
2 waste, either on a temporary basis or for a period of years, in  
3 such a manner as not to constitute disposal of such hazardous  
4 waste;

5 Q. "storage tank" means an above ground storage  
6 tank or an underground storage tank;

7 R. "tank installer" means any individual who  
8 installs or repairs a storage tank;

9 S. "transporter" means a person engaged in the  
10 movement of hazardous waste, not including movement at the site  
11 of generation, disposal, treatment or storage;

12 T. "treatment" means any method, technique or  
13 process, including neutralization, designed to change the  
14 physical, chemical or biological character or composition of  
15 [~~any~~] a hazardous waste so as to neutralize [~~such~~] the waste or  
16 so as to render [~~such~~] the waste nonhazardous, safer for  
17 transport, amenable to recovery, amenable to storage or reduced  
18 in volume. "Treatment" includes any activity or processing  
19 designed to change the physical form or chemical composition of  
20 hazardous waste so as to render it nonhazardous;

21 U. "underground storage tank" means a single tank  
22 or combination of tanks, including underground pipes connected  
23 thereto, that are used to contain an accumulation of regulated  
24 substances and the volume of which, including the volume of the  
25 underground pipes connected thereto, is ten percent or more

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1       beneath the surface of the ground. "Underground storage tank"  
2       does not include any:

3                       (1) farm, ranch or residential tank of one  
4       thousand one hundred gallons or less capacity used for storing  
5       motor fuel or heating oil for noncommercial purposes;

6                       (2) septic tank;

7                       (3) pipeline facility, including gathering  
8       lines that are regulated under the federal Natural Gas Pipeline  
9       Safety Act of 1968 or the federal Hazardous Liquid Pipeline  
10      Safety Act of 1979, or that is an intrastate pipeline facility  
11      regulated under state laws comparable to either act;

12                      (4) surface impoundment, pit, pond or lagoon;

13                      (5) storm water or wastewater collection  
14      system;

15                      (6) flow-through process tank;

16                      (7) liquid trap, tank or associated gathering  
17      lines directly related to oil or gas production and gathering  
18      operations;

19                      (8) storage tank situated in an underground  
20      area, such as a basement, cellar, mineworking drift, shaft or  
21      tunnel, if the storage tank is situated upon or above the  
22      surface of the undesignated floor;

23                      (9) tank associated with an emergency  
24      generator system;

25                      (10) tank exempted by rule of the board after

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1 finding that the type of tank is adequately regulated under  
2 another federal or state law; or

3 (11) [~~pipes~~] pipe connected to any tank that  
4 is described in Paragraphs (1) through (10) of this subsection;  
5 and

6 V. "used oil" means any oil [~~that has been~~] refined  
7 from crude oil, or any synthetic oil, that has been used and as  
8 a result of such use is contaminated by physical or chemical  
9 impurities."

10 Section 2. Section 74-6B-3 NMSA 1978 (being Laws 1990,  
11 Chapter 124, Section 3, as amended) is amended to read:

12 "74-6B-3. DEFINITIONS.--As used in the Ground Water  
13 Protection Act:

14 A. "above ground storage tank" means a single tank  
15 or combination of tanks, including underground pipes connected  
16 thereto, that are used to contain petroleum, including crude  
17 oil or any fraction thereof that is liquid at standard  
18 conditions of temperature and pressure of sixty degrees  
19 Fahrenheit and fourteen and seven-tenths pounds per square inch  
20 absolute, and the volume of which is more than ninety percent  
21 above the surface of the ground. The term does not include  
22 any:

23 (1) farm, ranch or residential tank used for  
24 storing motor fuel or heating oil for noncommercial purposes;

25 (2) pipeline facility, including gathering

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1 lines that are regulated under the federal Natural Gas Pipeline  
2 Safety Act of 1968 or the federal Hazardous Liquid Pipeline  
3 Safety Act of 1979, or that is an intrastate pipeline facility  
4 regulated under state laws comparable to either act;

5 (3) surface impoundment, pit, pond or lagoon;

6 (4) storm water or wastewater collection  
7 system;

8 (5) flow-through process tank;

9 (6) liquid trap, tank or associated gathering  
10 lines or other storage methods or devices related to oil, gas  
11 or mining exploration, production, transportation, refining,  
12 processing or storage, or the oil field service industry  
13 operations;

14 (7) tank associated with an emergency  
15 generator system;

16 (8) tank used by a crop-dusting or crop-  
17 spraying service;

18 [~~(8) pipes~~] (9) pipe connected to any tank  
19 that is described in Paragraphs (1) through (8) of this  
20 subsection; or

21 [~~(9) tanks~~] (10) tank or related [~~pipelines~~]  
22 pipeline and [~~facilities~~] facility owned or used by a refinery,  
23 natural gas processing plant or pipeline company in the regular  
24 course of their refining, processing or pipeline business;

25 B. "board" means the environmental improvement

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1 board;

2 C. "corrective action" means an action taken in  
3 accordance with rules of the board to investigate, minimize,  
4 eliminate or clean up a release to protect the public health,  
5 safety and welfare or the environment;

6 D. "department" means the department of  
7 environment;

8 E. "operator" means any person in control of or  
9 having responsibility for the daily operation of a storage  
10 tank;

11 F. "owner" means:

12 (1) in the case of a storage tank in use or  
13 brought into use on or after November 8, 1984, a person who  
14 owns the storage tank; and

15 (2) in the case of a storage tank in use  
16 before November 8, 1984 but no longer in use after that date, a  
17 person who owned the tank immediately before the  
18 discontinuation of its use;

19 G. "person" means an individual or any legal  
20 entity, including all governmental entities;

21 H. "regulated substance" means:

22 (1) a substance defined in Section 101(14) of  
23 the federal Comprehensive Environmental Response, Compensation  
24 and Liability Act of 1980, but not including a substance  
25 regulated as a hazardous waste under Subtitle C of the federal

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1 Resource Conservation and Recovery Act of 1976, as amended; and

2 (2) petroleum, including crude oil or a  
3 fraction thereof, that is liquid at standard conditions of  
4 temperature and pressure of sixty degrees Fahrenheit and  
5 fourteen and seven-tenths pounds per square inch absolute;

6 I. "release" means a spilling, leaking, emitting,  
7 discharging, escaping, leaching or disposing from a storage  
8 tank into ground water, surface water or subsurface soils in  
9 amounts exceeding twenty-five gallons;

10 J. "secretary" means the secretary of environment;

11 K. "site" means a place where there is or was at a  
12 previous time one or more storage tanks and may include areas  
13 contiguous to the actual location or previous location of the  
14 tanks;

15 L. "storage tank" means an above ground storage  
16 tank or an underground storage tank; and

17 M. "underground storage tank" means a single tank  
18 or combination of tanks, including underground pipes connected  
19 thereto, that are used to contain an accumulation of regulated  
20 substances and the volume of which, including the volume of the  
21 underground pipes connected thereto, is ten percent or more  
22 beneath the surface of the ground. The term does not include  
23 any:

24 (1) farm, ranch or residential tank of one  
25 thousand one hundred gallons or less capacity used for storing

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1 motor fuel or heating oil for noncommercial purposes;

2 (2) septic tank;

3 (3) pipeline facility, including gathering  
4 lines regulated under the federal Natural Gas Pipeline Safety  
5 Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act  
6 of 1979, or that is an intrastate pipeline facility regulated  
7 under state laws comparable to either act;

8 (4) surface impoundment, pit, pond or lagoon;

9 (5) storm water or wastewater collection  
10 system;

11 (6) flow-through process tank;

12 (7) liquid trap, tank or associated gathering  
13 lines directly related to oil or gas production and gathering  
14 operations;

15 (8) storage tank situated in an underground  
16 area, such as a basement, cellar, mineworking drift, shaft or  
17 tunnel, if the storage tank is situated upon or above the  
18 surface of the undesignated floor;

19 (9) tank associated with an emergency  
20 generator system;

21 (10) tank exempted by rule of the board after  
22 finding that the type of tank is adequately regulated under  
23 another federal or state law; or

24 (11) pipes connected to any tank that is  
25 described in Paragraphs (1) through (10) of this subsection."

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